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In the Supreme Court of the United States

OCTOBER TERM, 1979

MORRILTON SCHOOL DISTRICT NO. 32, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners, two school districts and their respective officials, seek review of a court of appeals decision requiring these districts to merge with a third district because, as both courts below concluded, "[t]he geographical arrangement of the * * * districts * * * results from the gerrymandering of district lines * * * in deference to the requirement of [racial] segregation" (Pet. App. A-11, A-30). The court of appeals, in an opinion upon which we rely, properly applied the principles established by this Court governing remedies for inter-district segregation, and there is no reason for further review.

1. This suit was filed by the United States in 1972 to eliminate continuing vestiges of the racially dual school system required by Arkansas law prior to 1954. Named as defendants in this action were the public school authorities of the State of Arkansas and of Conway County, Arkansas, and the six school districts of that county and their officials.

In 1973, the district court entered an opinion and decree (Pet. App. A-21 to A-49) holding that the East Side District, one of the six defendant districts, was created and maintained as an all-black school district pursuant to the previously extant state segregation law (*id.* at A-25 to A-30). The district court found that the creation of this segregated school district was accomplished by the racial gerrymandering of district lines over a period of years through consolidations in which small white school districts were joined together and small black school districts were combined with each other. As the district court concluded (*id.* at A-30):

> The geographical arrangement of the Conway County districts resembles a crazy quilt, and the resemblance results from the gerrymandering of district lines in years past in deference to the requirement of segregation; there can be no other explanation for it.

This finding was sustained by the court of appeals, which agreed that the "pattern of consolidations shows the impact of [prior *de jure* segregation]" (*id.* at A-11) and that "[t]he district lines in Conway County * * * reflect a discriminatory pattern" (*id.* at A-12).

In March, 1979, the district court held a hearing with respect to the remedy to be imposed for the unconstitutional condition previously found to exist (Pet.

App. A-50 to A-59).[1] Three of the defendant school districts—the two petitioner school districts and the East Side District—each advanced a desegregation plan. The United States advocated a fourth plan. The district court adopted the "basic concept" (*id.* at A-52) of the government's proposal and ordered the specified relief to be implemented by the beginning of the 1979-1980 school year (*id.* at A-60).

The court of appeals, sitting en banc, affirmed the district court order requiring consolidation (Pet. App. A-3 to A-4, A-5 to A-20), but modified the order to permit consolidation to occur in two steps (*id.* at A-19).

On June 28, 1979, Mr. Justice Blackmun denied petitioners' application for a stay of the court of appeals' judgment (No. A-1109), and the consolidation of the three districts at the high school level--the first step of the consolidation--was effective for the 1979-1980 school year.

2. As demonstrated by the findings and conclusions of the courts below, the boundaries of petitioner school districts were established in conformity with the requirements of *de jure* segregation.[2] In particular,

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[1] In 1973, the district court, to correct racial segregation in Conway County District No. 1, ordered the consolidation of the three non-continguous parts of that district with three white districts, one of which was petitioner Morrilton School District. No appeal was taken from that order and the consolidations were effective for the 1973-1974 school year.

[2] The courts below also found that petitioner districts operated dual school systems until the 1960's (Pet. App. A-15 n.5, A-27), that petitioner Plumerville District regularly sent its black students to the East Side high school (*id.* at A-15 n.5), and that there was continuing racial segregation in the composition of the faculties in petitioner districts (*id.* at A-12 to A-13).

petitioner districts border the East Side District, which was found to be unconstitutionally segregated. As shown by the map of the Conway County school districts (Pet. App. A-10), the East Side District is a conglomeration of non-contiguous land areas, with several of these areas separated from the main body of the East Side District by petitioner Morrilton District; petitioner Plumerville District's irregular east boundary adjoins the main part of the East Side District, and one of the East Side District's non-contiguous sections is to the west of the Plumerville District. The record fully supports the findings of the courts below that the boundaries of these districts were racially gerrymandered and that this *de jure* segregation affected petitioner districts as well as the East Side District (*id.* at A-16, A-30, A-35).

Given this determination of racial gerrymandering, the courts below correctly ordered inter-district relief "tailored to cure the ' "*condition* * * *." ' " *Milliken* v. *Bradley* (*Milliken II*), 433 U.S. 267, 282 (1977) (emphasis in original), quoting *Milliken* v. *Bradley* ("*Milliken I*"), 418 U.S. 717, 738 (1974). Gerrymandering is a common device of segregation, and the courts have consistently indicated that such a constitutional violation warrants inter-district relief. As the Court stated in *Milliken I*, *supra*, 418 U.S. at 744-745 (emphasis added):

> Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, *or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation directly caused by the constitutional violation.*

See also, *e.g.*, *Milliken I*, *supra*, 418 U.S. at 744 (citing *Haney* v. *County Board of Education of Sevier County*, 429 F. 2d 364 (8th Cir. 1970), "State contributed to separation of races by drawing of school district lines"); 418 U.S. at 755 (Stewart, J., concurring) (citing *Sevier County*, *supra*, "Were it to be shown, for example, that state officials had contributed to the separation of the races by drawing or redrawing school district lines * * * then a decree calling * * * for restructuring of district lines might well be appropriate"); *United States* v. *Board of School Commissioners of Indianapolis, Indiana*, 573 F. 2d 400, 403, 405, 407 (7th Cir.), cert. denied, 439 U.S. 824 (1978) (racial gerrymandering of school districts justifies inter-district relief under *Milliken I*).

Moreover, the court of appeals found in this case that "absent racial considerations, several areas would have consolidated with [petitioner] Morrilton, Nemo Vista or [petitioner] Plumerville instead of East Side" (Pet. App. A-12) and that "East Side is almost entirely black and includes territory that would properly have been absorbed by the surrounding districts were it not for racial considerations" (*id.* at A-14). We also note that, as petitioners acknowledge (Pet. 12-13), all remedial plans proposed to the district court, including those proposed by petitioners, called for some form of inter-district

relief. Especially in these circumstances, the courts below correctly determined that petitioners were "involved in []or affected by the constitutional violation" (*Milliken II*, *supra*, 433 U.S. at 282).[3]

3. Petitioners also challenge (Pet. 12-15) particular aspects of the relief ordered by the courts below. However, they fail to demonstrate how the remedy devised by the district court fell short of the requirements of *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), or *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406, 420 (1977). The "nature of the violation" here (*Milliken I*, *supra*, 418 U.S. at 738, quoting *Swann*, *supra*, 402 U.S. at 16) was state imposed racial segregation that governed school consolidations in Conway County prior to 1954; no consolidations occurred after 1954 until those ordered by the federal courts. It cannot be doubted that an appropriate corrective measure was to direct that school boundaries be redrawn to eliminate their racial characteristics. Furthermore, petitioners did not dispute

[3]Contrary to petitioners' contention (Pet. 6-7, 9-12), the decision of the court of appeals does not conflict with the decisions of this Court or of the other courts of appeals. Unlike the instant case, the boundaries of the Michigan school districts in *Milliken I* were not established "for the purpose of creating, maintining or perpetuating segregation of races" (418 U.S. at 748). Likewise, neither *Tasby* v. *Estes*, 572 F. 2d 1010 (5th Cir. 1978), cert. granted *sub nom. Estes* v. *Metropolitan Branches of Dallas NAACP*, Nos. 78-253, 78-282, 78-283 (Feb. 21, 1979), nor *Bradley* v. *School Board of the City of Richmond*, 462 F. 2d 1058 (4th Cir. 1972), aff'd by an equally divided Court, 412 U.S. 92 (1973), involved school district boundaries that had been racially gerrymandered. Moreover, the district court in *Estes* expressly observed that "interdistrict remedies have been ordered where school district boundaries were altered with significant segregative effect * * *" (412 F. Supp. 1185, 1191 (N.D. Tex. 1975)), but found that no such violation was present in that case (*id.* at 1192).

in the lower courts that, if there was to be any remedy at all, considerable alteration of their district lines as well as those of the East Side District would be necessary (Pet. 12-13; Pet. App. A-16 n.6). In fact, the plan adopted by the district court was favored over the other submissions by two of the affected districts (Pet. App. A-17) and was the second choice of most of the parties to the litigation (*id.* at A-52).

Nor did the district court, in adopting a remedial plan, override "manifest educational advantages" as petitioners assert (Pet. 14). The district court was fully mindful of the importance of local control and the need for quality public education (Pet. App. A-54 to A-55); it found that the plan it selected "results in the most complete and * * * equitable integration," is the "most likely to prevent * * * resegregation," is the "most consistent with educational objectives," and allows "the greatest and most efficient use of existing personnel and facilities" (*id.* at A-52). These findings were affirmed by the court of appeals (*id.* at A-17).

. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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